**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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| JON ALIN, ROBERT LOUGHEAD, and PAUL FELDMAN, individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br>vs.<br><br>AMERICAN HONDA MOTOR COMPANY, INC.,<br><br>Defendant. | **Civil Action No.: 2:08-cv-04825** |

# PLAINTIFFS' RESPONSE TO OBJECTIONS FILED BY CLASS MEMBERS

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# LEGAL ARGUMENT

## POINT I

## THE OBJECTIONS TO THE SETTLEMENT SHOULD BE OVERRULED

The Class's reaction to the settlement has been overwhelmingly positive. Although there are more than 2.4 million class members, only 97 objected and only 1,596 opted out[1]. (See Certification of Matthew R. Mendelsohn ("Mendelsohn Cert.") at ¶4; Affidavit of Joel Botzet ("Botzet Aff. at ¶ 16.))These objectors and opt-outs represent only 0.0684% of the Class. This Court has held where there is such a small negative response, it demonstrates overwhelming support for the settlement. *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 460-461 (D.N.J. 2008) (citing *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-119 (3d Cir. 1990)); *see also Myers v. Medquist, Inc.*, No. 05-4608, 2009 U.S. Dist. Lexis, 27908, *37 (D.N.J. Mar. 31, 2009) (noting that based on the low number of objectors and opt-outs, the court held that it was "justified in assuming more than 98% of the Class Members" approved the settlement).

The same is true here. The fact that only 0.0684%% of the class had a negative response is a testament to the fairness, reasonableness and adequacy of the settlement. The limited objections that have been received lack merit and should be overruled.

### A. The Odyssey Sub-Class Receives Substantial Benefits From This Settlement

Several Odyssey Sub-Class Members make varying objections to the terms of the settlement. We will attempt to respond to all of these objections below.

#### 1) Odyssey Sub-Class Members' Reimbursement Claims are Properly Limited to Failures That Occurred within the New Vehicle Limited Warranty Period

[1] Of the 96 objections received, 95 were filed *pro se* and 1 was filed by "professional objectors." (Mendelsohn Cert. at ¶5.)

Some Odyssey Sub-Class Members have objected to this settlement because reimbursement claims for condenser damage are limited to only those individuals who paid for a condenser repair during the 3-year/36,000 mile New Vehicle Limited Warranty ("NVLW"). Class Counsel, however, believe that such a limitation on reimbursement claims is completely appropriate.

One of the primary allegations made by the Odyssey Sub-Class in the Second Amended Complaint was that Honda breached its express warranty by failing to cover condenser failures that occurred during the NVLW period. Plaintiffs alleged that Honda improperly classified condenser failures as being caused by an outside influence (*e.g.*, rocks and road debris) and thereby refused to cover repairs under the NVLW. (*See* Second Amended Complaint (Doc. No. 49) at ¶22.) However, Honda disputed that it had any obligation to pay for such damage and argued in its motion to dismiss that under the terms of the warranty Honda was only obligated to cover damage caused by defects in material or workmanship during the NVLW and had no obligation to cover what it characterized as design defects. (*See* Opinion on Motion to Dismiss, Pg. 6-7 (Doc. No. 23)) In its Opinion regarding the motion to dismiss, the Court appeared to agree with Honda that it was only obligated to cover defects in material or workmanship. However, the Court did not decide whether the defects alleged could be construed as defects in material or workmanship, instead holding that was a question of fact that could not be decided at the pleading stage. (*Id.* at 10.) Given such a ruling, there was a chance that at the summary judgment stage that the Court could determine that Honda had no obligation to cover condenser damage under its NVLW. If that occurred, the Odyssey Sub-Class may have been left without any remedy. Accordingly, Class Counsel believe that this settlement, which provides 100%

reimbursement for Odyssey Sub-Class Members who paid for a repair due to condenser damage during the NVLW period is an extraordinary result for the Class.

Some Odyssey Sub-Class Members also object to the reimbursement guidelines because Class Members who paid for a condenser repair during an "extended warranty" that they purchased are not permitted to file claims for reimbursement. There are a number of reasons why this objection should be rejected. First, there are a numerous third-parties that offer extended warranties, and Honda obviously does not have control over outside entities. Second, "extended service contracts" ("ESCs") that are purchased through Honda are separate and distinct from NVLWs. (*See* Mendelsohn Cert. at ¶ 6). Whereas Honda's NVLW covers any repairs for defects in material or workmanship that manifest during the warranty period (sometimes called "bumper-to-bumper" warranties), ESCs only cover the repair of "mechanical breakdowns" in certain vehicle components, subject to various exclusions. (*Id.*) Thus objectors that suffered a condenser failure while their vehicle was covered by an ESC are differently situated than those Class Members who were denied repairs under their NVLW. (*Id.*) Third, Plaintiffs did not allege breach of an ESC, and the failure to comply with an ESC has never been part of this case. Finally, as discussed below, the limitation of the settlement was agreed to after extensive arms-length negotiations of counsel, and is fair, reasonable and adequate. Honda agreed to provide full recovery for issues during the NVLW, and Class Counsel determined that it was appropriate to limit reimbursement claims to only those Class Members that paid for a condenser failure during their NVLW period.

**2) Reimbursement of up to $55.06 for the Purchase and Installation of a Protective Screen Intended to Prevent Future Condenser Failures is a Substantial Benefit to the entire Odyssey Sub-Class**

A few Odyssey Sub-Class Members have objected to the settlement on the basis that the $55.06 that they are eligible to be reimbursed for the screen purchase and installation does not cover 100% of their costs. However, the $55.06 reimbursement is a substantial benefit. As Honda has represented to Class Counsel, Honda dealerships are independently owned entities, and Honda cannot legally dictate to their dealers how much they are entitled to charge for parts or labor for non-warranty items. (*See* Mendelsohn Cert. at ¶7.) That said, Honda has established a manufacturer's suggested retail price ("MSRP") for the screen of $35.06, and it has agreed to reimburse Class Members for that entire amount. If a few Honda dealers across the country charge $38 or $42 for this part, there is nothing Honda can do about it. Of course, Odyssey Sub-Class Members are free to contact any Honda dealer in order to obtain an acceptable price for the purchase of the screen.

Additionally, Honda has agreed to reimburse Odyssey Sub-Class Members up to $20 towards labor costs if they choose to have the protective screen installed by a third-party. Through a Service Bulletin issued by Honda to all its dealers, Honda has advised that they determined that the installation of the screen should take .6 hours to complete. (*Id*. at ¶ 8.) Based on the 2011 national average hourly rate charged by Honda dealers of $98.10/hour, the average labor cost to install the screen is $58.56. (*Id*. at ¶ 9,) Like the cost of the part, although Honda recommended .6 hours of labor time to install the screen, they cannot require dealers to charge that exact amount. (*Id*.) However, the settlement allows Odyssey Sub-Class Members to shop around for the best price for installation of the screen, and they are free to have the screen installed by a non-Honda mechanic.

When parts and labor are considered together, most Odyssey Sub-Class Members that have the screen installed at a Honda dealer will be reimbursed for 59% of their expense to purchase and install the protective screen.[2] Accordingly, this portion of the settlement should be

[2] $55.06 reimbursed out of an average total cost of $93.92.

deemed fair, reasonable and adequate. *See Careccio v. BMW N. Am., LLC,* Civ. Action No. 08-2619, 2010 WL 1752347, at *6 (D.N.J. Apr. 29, 2010) ("full compensation is not a prerequisite for a fair settlement"); *see also In re Corel Corp. Sec. Litig.*, 293 F. Supp. 2d 484, 489–90 (E.D. Pa. 2003) (settlement for 15% of "best possible recovery" was reasonable).

**B. The Reimbursement Schedule for the CR-V and TSX Sub-Classes is Fair, Reasonable and Adequate**

Several CR-V and TSX Sub-Class Members make varying objections to the reimbursement schedule negotiated as part of this settlement. Most of these objections are from (1) individuals who paid for compressor repairs beyond the 8 year/96,000 cut-off and therefore are not entitled to reimbursement, or (2) Class Members who argue that they should be entitled to a higher reimbursement percentage. Both of these objections should be rejected.

In a class action settlement, "it is permissible to award different relief to class members based upon objective differences in positions of the class members." *Farrell v. OpenTable, Inc.*, No. C 11-1785-SI, 012 WL 273688, at *3 (N.D. Cal. Jan. 30, 2012) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 461 (9th Cir. 2000) (approving a settlement methodology where class members received different relief, including a large portion who received no monetary recovery)); *see also In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp.2d 935, 979 (N.D. Ill. 2011) (noting that "there is no rule that settlements benefit all class members equally ... as long as the settlement terms are rationally based on legitimate considerations" (quotations omitted)). This is particularly true where the claims of some class members are weaker than those of others. *See In re MetLife Demutualization Litig.*, 689 F. Supp.2d 297, 344 (E.D.N.Y. 2010) (approving as fair and reasonable a settlement allocation with a smaller amount of recovery to former policyholders and other non-closed-block policyholders than to the closed-block policyholders where the claims of the former were weaker than the latter).

Here, the reimbursement schedule for the CR-V and TSX Sub-Classes was agreed to after extensive arms-length negotiations, and it is fair, reasonable and adequate. As discussed Plaintiffs' Brief in Support of Final Approval, unlike condenser damage, Honda was covering the repair costs for compressor failures that occurred during the NVLW. Accordingly, plaintiffs alleged that Honda was aware of the defect in its compressors, and it therefore had an obligation to disclose the defect to Class Members and cover failures that occurred beyond the NVLW. In fashioning the reimbursement schedules, these allegations had to be weighed against Honda's position that vehicle manufacturers do not have an obligation to guarantee that parts will not fail beyond the warranty period and that no vehicle will last forever. In weighing the merits of their respective positions, the parties negotiated a sliding reimbursement scale that would provide a greater percentage of reimbursement the closer the repair was made to the original NVLW end date, with a cut-off of 8 years or 96,000 miles. Any purchasers that paid for repairs after the cut-off are not entitled to any reimbursement. (*See* Settlement Agreement, Section 4.2.)

The reimbursement schedule, negotiated at arms-length by experienced counsel, is precisely the type of decision that is entitled to deference by the Court. *See Brown v. Esmor Correctional Services, Inc.*, No. Civ. 98-1282DRD, 2005 WL 1917869, *7 (D.N.J. Aug. 10, 2005) (in discussing the size and allocation of the settlement fund, Judge Debevoise explained that the "judgment of skilled counsel who have had extensive experience in class action litigation and who have pursued this case with great vigor is entitled to considerable deference"). Here, plaintiffs sought to achieve the greatest possible recovery for the most CR-V and TSX Sub-Class Members. In fact, the settlement provides for partial reimbursement even to class members who had owned 8 year old vehicles that had been driven for just under 100,000 miles. This is an excellent result. The reimbursement schedule was the result of "give and take" during negotiations as in all other class action settlements:

> Contrary to the objectors' expectations, the settlement is not a wish-list of class members that the Defendant[ ] must fulfill. These ... objectors fail to understand that the form and amounts of benefit provided were arrived at as a result of hard-fought negotiations between experienced class action attorneys. Plaintiffs' counsel, having weighed the risks of proving liability and damages at trial, negotiated ... benefits in an amount and form that, in their judgment, would compensate plaintiffs....

*Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 65 (S.D.N.Y. 2003) (quotations omitted).

These objections should be rejected by the Court.

**C. The Boilerplate Objections Filed by Professional Objectors Should Be Rejected**

It is an indisputable fact that "Federal courts are increasingly weary of professional objectors." *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 295 n.26 (E.D. Pa. 2003). As stated in *In re Cardinal Health, Inc. Sec. Litig*., 550 F. Supp. 2d 751, 754 (S.D. Ohio 2008):

> [C]lass actions also attract those in the legal profession who subsist primarily off of the skill and labor of, to say nothing of the risk borne by, more capable attorneys. These are the opportunistic objectors. Although they contribute nothing to the class, they object to the settlement, thereby obstructing payment to lead counsel or the class in the hope that lead plaintiff will pay them to go away.

*See also* ; *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1378 (9th Cir. 1993) (labeling objectors "spoilers" when only twenty of 113,000 class members objected); *Barnes v. FleetBoston,* No. 01 Civ. 10395, 2006 U.S. Dist. LEXIS 71072, at *3 (D. Mass. Aug. 22, 2006) ("Repeat objectors to class action settlements can make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements. The larger the settlement, the more cost-effective it is to pay the objectors rather than suffer the delay of waiting for an appeal to be resolved (even an expedited appeal)."); *In re Rite Aid Corp. Sec. Litig*., 269 F. Supp. 2d 603, 610 n.9 (E.D. Pa. 2003) (criticizing a "professional gadfly" who had "become a twelfthhour squeaky wheel"), *vacated on other grounds*, 396 F.3d 294 (3d Cir. 2005); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp.2d 942, 973 (E.D. Tex. 2000) (noting that some objections "were obviously canned objections filed by professional objectors who seek out class actions to simply extract a fee by lodging generic, unhelpful protests"); *Snell v. Allianz Life Ins. Co. of N. Am.*, No. Civ. 97-2784 RLE, 2000 WL 1336640, at *9 (D. Minn. Sept. 8, 2000) (noting that movants were "represented by 'professional objectors,' who are a pariah to the functionality of class action lawsuits, as they maraud proposed settlements—not to assess their merits on some principled basis—but in order to extort the parties, and particularly the settling defendants, into ransoming a settlement that could otherwise be undermined by a time-consuming appeals process"). Thus, an increased level of skepticism is warranted when reviewing an objection submitted by a professional objector. *See* 5 William B. Rubenstein, Alba Conte & Herbert B. Newberg, NEWBERG ON CLASS ACTIONS § 15:37 (4th ed. 2009).

Here objector Andrew Kaye[3], represented by "professional objector" counsel Forrest Turkish and Gary Sibley, has filed what can only be described as boilerplate objections to the settlement. All of Mr. Kaye's objections are meritless and should be rejected by the Court.

**1) The Notice Plan was Adequate and Appropriate**

Mr. Kaye contends that the Class notice was inadequate because only Class Members who called to complain and are part of Honda's customer service database received notice. (*See* Kaye Objection at ¶9.) That is false. In reality, Class Members were identified through a search of the vehicle registration databases in every state. (Mendelsohn Cert. at ¶ 3.) In all, more than

[3] Mr. Kaye alleges that he is an owner of a 2006 Honda Odyssey. Interestingly, nowhere in his 19-page objection does Mr. Kaye allege that his vehicle suffered from condenser damage. Accordingly, Mr. Kaye appears to be one of the Odyssey Sub-Class members who has suffered no damage to date, but will still benefit from this settlement because he is entitled to reimbursement of up to $55.06 for the installation of a protective screen that is intended to prevent his vehicle from sustaining any damage in the future.

2.4 million Class Members were identified and were mailed an individual mailed notice. (Affidavit of Joel Botzet ("Botzet Aff. at ¶¶ 8-14.) Further, as discussed in Point III of Plaintiffs' Brief in Support of Final Approval, a settlement website was established (www.AlinLitigation.com) that provides answers to frequently asked questions, provides all relevant settlement documents (including the notices and claim forms), and provides the contact information for the settlement administrator and counsel. (Id. at ¶5.) Additionally, a toll-free telephone support line providing 24-hour service via an interactive voice response system and live support is provided Monday through Friday from 8:00 a.m. to 4:30 p.m. CT. (Id. at ¶6.) This Court has repeatedly found such notice to be sufficient. *See e.g. Dewey v. Volkswagen of Am.*, 728 F.Supp.2d 546, 571 (D.N.J. 2010).

**2) There are no Intra-Class Conflicts**

In another "canned" objection, Mr. Kaye asserts that there is an "intra-class" conflict between the Odyssey Sub-Class and the CR-V and TSX Sub-Classes. He suggests that such a conflict exists because Odyssey Sub-Class Members are "only" entitled to 100% reimbursement if their failure occurred during the NVLW period, while CR-V and TSX Sub-Class Members are entitled to prorated reimbursements after the expiration of the NVLW warranty. Obviously, there can be no "intra-class" conflicts between Odyssey owners and CRV/TSX owners because they are not part of the same class, but instead are members of distinct sub-classes. In fact, the solution to any alleged "intra-class conflicts" is the creation of Sub-Classes. *See Sullivan v. D.B. Invs., Inc.*, --- F.3d. ---, 2011 WL 6367740 (3d. Cir. Dec. 20, 2011) ("In prior instances where objectors challenged the fairness of intra-class allocation of settlement funds, we have explained that 'where a class is found to include divergent in interest,' the use of subclasses may be appropriate and 'is designed to prevent conflicts of interest in class representation.'" (quoting *In* *re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 271 (3d Cir. 2009)). Accordingly, there are no "intra-class" conflicts and this objection should be rejected.[4]

**3) Plaintiff Jon Alin's claims are Typical of the Odyssey Sub-Class**

Mr. Kaye next argues that Plaintiff Jon Alin is not a typical class representative because his condenser damage occurred while his vehicle was still covered under the NVLW, while other Odyssey Sub-Class Members sustained damage outside the warranty period. This argument is contrary to the law in this Circuit. *See Dewey*, 728 F. Supp. 2d at 566 ("Indeed, 'cases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of varying ... fact patterns.'" (citing *Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001)). In other words, "the typicality requirement is met, regardless of factual differences, as long as the same unlawful conduct was directed at or affected both the plaintiffs and the absent class members." *Id.* (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 531-32 (3d Cir. 2004)). Here, Jon Alin and each Odyssey Sub-Class Member is or was an owner or lessee of one or more Honda vehicles. Additionally, Jon Alin and the Class Members each owned or leased cars with an air

[4] Even if the Court chose not to certify separate sub-classes, there would still not be an intra-class conflict. The Third Circuit has rejected the proposition that unequal relief establishes the existence of a conflict. In language that is instructive here, the Third Circuit explained its reasoning in *In re Pet Food Prods. Liab. Litig.*:

> We rejected objectors' argument that the fact that the fund was allocated so that a greater percentage of the settlement value was designated for certain class members demonstrated a conflict between groups. We found that the difference in allocations was simply a reflection of the extent of the injury that certain class members incurred and did not clearly suggest that the class members had antagonistic interests.

629 F.3d 333, 347 (3d Cir. 2010) (citing *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 272 (3d Cir. 2009)); *see also In re Diet Drugs Prods. Liab. Litig.*, 385 F.3d 386, 395 (3d Cir. 2004).

conditioning condenser that allegedly failed to withstand impact from road debris and was not properly protected from such impacts, and each either suffered or risked suffering damage as a result. Thus, each potential class member was subjected to the same conduct, and the named plaintiffs' claims are typical of the claims of the other Class Members. *See Dewey* 728 F.Supp.2d at 566 (holding the class representatives were typical under very similar circumstances and drawing no distinction by whether the alleged failure occurred during or after the warranty period)*; see also Zinberg v. Washington Bancorp, Inc.*, 138 F.R.D. 397, 407 (D.N.J. 1990).

Mr. Kaye's reliance on *Danvers Motor Co. v. Ford Motor Co.*, 543 F.3d 141, 150 (3d Cir. 2008), is also misplaced. That case involved car dealers with "quite diverse" interests suing the manufacturer. In finding insufficient typicality between claims, the Court observed that "proposed class members will likely need to pursue different, and possibly conflicting, legal theories to succeed." *Id*. Unlike the *Danvers* class members, here the named plaintiffs and the Class Members share typicality in that all are purchasers or lessees of certain model year Honda vehicles. Moreover, whereas the *Danvers* case turned on "whether Ford's conduct vis-a-vis a particular dealer violated the dealer's state's franchise laws" this action was largely based on causes of action that applied to all Odyssey Sub-Class Members: breach of express warranty, violations of the New Jersey Consumer Fraud Act, common law fraud, breach of the duty of good faith and fair dealing, and negligent misrepresentation.

Mr. Kaye singles out the breach of express warranty claim and argues that Odyssey Sub-Class Members whose damage occurred outside the warranty period could not pursue such a claim. That argument completely ignores plaintiffs' Second Amended Complaint, which alleges, *inter alia*, that Honda breached its express warranties by selling and leasing the Odyssey vehicles that suffered from the condenser defect. Nowhere in plaintiffs' Second Amended Complaint is the breach of express warranty claim limited to only those Class Members who sustained a condenser failure during the NVLW period. In fact, at the Class Certification stage, plaintiffs' would have argued that even individuals that experienced a failure beyond the NVLW warranty period had a claim because the time limits contained in Honda's warranty period were unconscionable and inadequate to protect the plaintiffs and Class Members. Among other things, plaintiffs would have argued that Class Members had no meaningful choice in determining these time limitations due to gross disparity in bargaining, the terms of which unreasonably favored Honda, and Honda knew or should have known that the Class Vehicles were defective at the time of sale and would fail well before their useful lives. *See Henderson v. Volvo Cars of Nh Am., LLC*, Civ. No. 09-4146 (DMC)(JAD), 2010 WL 2925913 (D.N.J. July 21, 2010); *In re Samsung DLP Television Class Action Litig.*, Civ. No. 07-2141 (GEB), 2009 WL 3584352 (D.N.J. Oct. 27, 2009); *Payne v. Fujifilm U.S.A., Inc*., Civil Action No. 07-385 (JAG), 2007 WL 4591281 (D.N.J. Dec. 28, 2007); *Carlson v. General Motors Corp.*, 883 F.2d 287 (4th Cir. 1989); *Bussian v. DaimlerChrysler Corp.*, 411 F. Supp. 2d 614, 622 (M.D.N.C. 2005); *Meserole v. Sony Corp. of Am., Inc.*, No. 08 Cv. 8987 (RPP), 2009 WL 1403933 (S.D.N.Y. May 19, 2009).

In sum, Jon Alin was pursuing identical claims to the entire Odyssey Sub-Class, and he is a typical class representative.

**4) Plaintiff Jon Alin is an Adequate Class Representative**

Mr. Kaye alleges that Jon Alin is not an adequate representative of the Odyssey Sub-Class because his motivations are antagonistic to some members of the Odyssey Sub-Class. At the heart of the Mr. Kaye's adequacy argument is that certain Odyssey Sub-Class Members will not receive the same level of relief as other Class Members. Of course, the Third Circuit has rejected the proposition that unequal relief establishes the existence of a conflict:

> We rejected objectors' argument that the fact that the fund was allocated so that a greater percentage of the settlement value was designated for certain class members demonstrated a conflict between groups. We found that the difference in allocations was simply a reflection of the extent of the injury that certain class members incurred and did not clearly suggest that the class members had antagonistic interests.

*In re Pet Foods Prods. Liab. Litig.*, 629 F.3d 333, 347 (3d Cir. 2010) (citing *In re Ins. Brokerage*, 579 F.3d at 272); *see also In re Diet Drugs*, 385 F.3d at 395.

This argument also demonstrates Mr. Kaye's lack of understanding of the Settlement Agreement. As the Settlement Agreement makes clear, reimbursement of up to $55.06 for the purchase and installation of the protective screen is being provided to *all* current owners/lessees of class vehicles, including the Class Representatives. Accordingly, all current owners and lessees will realize the exact same future benefits from this vehicle modification.

Mr. Kaye's argument is largely based on his unfounded reliance on the United States Supreme Court's decision in *Amchem Prods., Inc. v. Windsor*, 512 U.S. 591 (1997), which does not apply here. Mr. Kaye contends that *Amchem* mandates that the settlement not be approved because of the supposed conflict of interest amongst Class Members who have and have not suffered damage during the warranty period, and who are receiving differing forms of relief. However, *Amchem* does not stand for that overly broad proposition at all. Rather, the *Amchem* class settlement was vacated because it suffered from a number of significant infirmities which are notably absent here. The parties in *Amchem* sought to settle the personal injury claims of a disparate group of actual and potential asbestos exposure victims. The proposed settlement was clearly collusive on its face because at the time that the complaint was filed, the parties also submitted a prepackaged settlement agreement. *Amchem*, 512 U.S. at 624-28.[5] The problem with the proposed class was that it was comprised of individuals with widely divergent interests. Although the class included individuals with existing asbestos exposure claims, it also included a large number of unknown claimants who had not yet filed claims, including some who did not even know that they had been exposed to asbestos. Observing that it was unaware of any settlement "as sprawling as this one" the Supreme Court held the parties could not possibly satisfy the commonality requirement of Rule 23(a) stating:

> Class members were exposed to different asbestos-containing products, for different amounts of time, in different ways, and over different periods. Some class members suffer no physical injury or have only asymptomatic pleural changes, while others suffer from lung cancer, disabling asbestosis, or from mesothelioma…. Each has a different history of cigarette smoking, a factor that complicates the causation inquiry.
>
> *The [exposure only] plaintiffs especially share little in common, either with each other or with the presently injured class members*. It is unclear whether they will contract asbestos-related disease and, if so, what disease each will suffer. They will incur different medical expenses because their monitoring and treatment will depend on singular circumstances and individual medical histories.

*Amchem*, 521 U.S. at 624, (quoting *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 626 (3d Cir. 1996)) (emphasis added). Because class members had such individualized and personalized issues, the Supreme Court held that the *Amchem* settlement class was fundamentally and fatally flawed by an irreparable lack of commonality, especially between existing asbestos claimants, potential claimants with no injuries, and all of the unknown class members who were unaware that they even had a claim.

The Supreme Court also was especially troubled that the settlement was binding class members who could not possibly be provided with adequate notice, because they were unknown and thus, their interests could not be adequately represented:

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[5] In fact, the Supreme Court found that the parties never intended to litigate that case. *Amchem*, 512 U.S. at 601. By contrast the record here establishes that this case was aggressively litigated on both sides.

> Impediments to the provision of adequate notice, the Third Circuit emphasized, rendered highly problematic any endeavor to tie to a settlement class persons with no perceptible asbestos-related disease at the time of settlement.

*Id*. at 626, 628. In direct contrast to *Amchem*, here, (1) all potential Class Members are known as they were identified through the state vehicle registration records, (2) all Odyssey vehicles had the same type condenser defects arising from common designs and materials, (3) Honda failed to notify all owners and lessees of the defect and failed to cover the cost of any damage and (4) all Class Members share the primary common interest in preventing future condenser failures in all class vehicles. In sum, *all* Class Members are known, have the *same* claims, and have a *common* interest in preventing future damage. *See Dewey*, 728 F. Supp.2d at 568 (noting that every class representative has "an interest in obtaining redress for future damage or avoiding future damage caused by the allegedly defective systems"). Clearly, none of the shortcomings which fated the *Amchem* settlement are present here.

Finally, Mr. Kaye's objection also ignores the practical reality, properly recognized by this Court, that in settling complex, risky litigation, "full compensation is not a prerequisite for a fair settlement." *Id*, 728 F. Supp.2d at 579 (quoting *Careccio*, 2010 WL 1752347, at *6)). The record demonstrates that the outcome of this litigation was uncertain and fraught with risk. Mr. Kaye simply does not seem to appreciate the legitimate process of compromise necessary to settle a hard-fought case. "The fact that the relief class members receive may differ does not reflect antagonism or differing interests." *Id*. at 568. Rather, it reflects the compromise reached to compensate the greatest number of Class Members. *Id*.

Perhaps the best example of Mr. Alin's adequacy as a class representative and his clear motivation to secure the greatest possible recovery for the class is that at the time the settlement was negotiated he no longer had a Class Vehicle. Despite the fact that he would in no way benefit from requiring Honda to provide a protective screen to all current Odyssey owners, he ensured that such a benefit was provided to the Sub-Class. Clearly, Mr. Alin is an adequate representative of the Odyssey Sub-Class.

**5) The Requested Attorney Fees are Reasonable in Light of the Value of the Settlement**

Mr. Kaye's main argument is that Class Counsel's requested fees are unreasonable because the value of the settlement has been dramatically overstated. However, Mr. Kaye's objections are based on erroneous readings of the Settlement Agreement and the existing law. First, as set forth in plaintiffs' brief in support of their application for an award of attorneys' fees ("Plaintiffs' Attorney Fee Brief"), the Court should award Counsel Fees in a class action based on the seven factors established by the Third Circuit in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195, n.1 (3d Cir. 2000), as well as the additional factors set forth in *In re Prudential Ins. Co. Am. Sales Practices Litig.*, 148 F.3d 283, 338-340 (3d Cir. 1998). Here, Mr. Kaye failed to perform any analysis of the *Gunter* and *Prudential* factors. On this ground alone, his objections should be summarily overruled. *See Nichols v. Smithkline Beecham Corp.*, No. Civ.A.00-6222, 2005 WL 950616, *21 (E.D. Pa. Apr. 22, 2005) (overruling objections to attorneys' fees which did "not take into consideration any of the *Gunter* factors which the Court must consider in analyzing a fee request"). In short, objections that do not address the appropriate factors are irrelevant as a matter of law and should be overruled.

Plaintiffs will not rehash their discussion concerning the reasonableness of the requested fee previously set forth in Plaintiffs' Attorney Fee Brief, but there are several inaccuracies in Mr. Kaye's objection that beg for a response.

First, Mr. Kaye wrongly asserts that plaintiffs' attempt to value the reimbursements for the CR-V and TSX Sub-Classes by using the number of customer complaints made to Honda is inappropriate. Essentially, Mr. Kaye argues that plaintiffs inflate the value because "actual claim rates [will be] miniscule." In actuality, the claims made to date by CR-V and TSX Sub-Class Members demonstrate that plaintiffs' valuation actually *underestimated* the number of claims. Specifically, plaintiffs' CR-V Sub-Class valuation was based on an estimated 7,907 claims, and as of February 27, 2012 there have already been 11,979 claims actually submitted. (*See* Botzet Aff. at ¶15.) Similarly, the TSX Sub-Class valuation was based on an estimated 286 claims and there have already been 887 claims submitted. (*Id.*)

Second, Mr. Kaye tries to denigrate this exceptional settlement by calling it a "coupon settlement." That is simply untrue. Class Members are receiving cash reimbursements for out-of-pocket expenses related to the alleged defects.

Finally, Mr. Kaye suggests that the settlement should be valued based solely on the value of the claims actually made. While plaintiffs will rely on their arguments set forth in Plaintiffs' Attorney Fee Brief regarding the proper way to value this settlement, even under Mr. Kaye's flawed assertion, Class Counsel's requested attorney fee is still reasonable. By way of example, even if Class Counsel's fee was based solely on the value of the CR-V claims submitted as of February 27, 2012 – and the value of all other aspects of the settlement were completely ignored – that value is $7,187,400[6], which would make plaintiffs' requested fee of $2,423,523.32 equal to only 33.7% of that portion of the settlement. Even under such an absurd and partial valuation, Class Counsel's requested fee would still be appropriate. *See, e.g., In re Rite Aid Corp. Sec.*

[6] That figure is calculated by multiplying the number of CR-V claims made to date (11,979) by the average repair cost for CR-V compressor repairs ($1,500), which equals $17,968,500. That figure then needs to be reduced to 40% to account for the average reimbursement percentage under the sliding-scale.

*Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (a review of 289 settlements demonstrating "average attorney's fees percentage [of] 31.71%" with a median value that "turns out to be one-third"); *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 736 (3d Cir. 2001) (noting that most fee awards in common fund cases range "from nineteen percent to forty-five percent of the settlement fund").

## CONCLUSION

For the foregoing reasons, plaintiffs request that this Court grant final approval of the Settlement Agreement and the Settlement Class.

Respectfully submitted,

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